



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

April 1, 2008

Honorable Martha Fuller Clark, Chairman
Committee on Energy, Environment and Economic Development
Room 102 Legislative Office Building
Concord, NH 03301

Re: HB 1471, relative to time limits for excavating and dredging permits

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 1471 that would make adjustments to clarify the process and time limits for Department of Environmental Services (DES) actions relative to wetlands permits under RSA 482-A. The DES supports this bill.

In August 2007, the Office of the Legislative Budget Assistant (LBA) completed an audit of the DES Alteration of Terrain (AoT) and Wetlands Programs and submitted an audit report to the Legislative Fiscal Committee. The LBA concluded in part that, "DES must be more efficient, effective and equitable in reviewing alteration of terrain and wetlands permit applications," but also cited a Wetlands Council member as stating that, "the quality of the Bureau's permits is excellent." The LBA made 19 specific recommendations for program improvements that generally fall into three broad categories: statutes and regulations that require change to correct inconsistencies; data management problems attributable primarily to an outdated database system, and; areas for program management improvement. In a letter to the Fiscal Committee dated August 13, 2007, that was included as an appendix to the audit report, DES concurred with the report conclusions and committed to the implementation of the audit recommendations.

HB 1471 proposes statutory changes to specifically address issues raised in the LBA Audit Report concerning permit review application timing limits (Paragraph 1), permit application reconsideration procedures (Paragraph 2), and administrative provisions of RSA 482-A (Paragraph 3). Specifically, the following changes are proposed:

1. The applicant would be required to respond to DES requests in a shorter time frame. The applicant response time is changed from 120 days to 60 days.
2. In the event that DES does not render a decision within the statutory time frames, DES would be required to issue a decision within 14 days of the deadline and refund a portion of the application fee to the applicant. Time frames for DES reviews could be suspended due to extenuating circumstances, such as a declared state emergency that requires dedicating staff resources to emergency response rather than to application evaluation.

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3. "Significant amendments" to permits and permit applications that trigger consideration of proposed changes as a new application are defined.
4. Appellants are provided additional time to file requests for reconsiderations for decisions rendered by the DES by changing the allotted time from 20 days to 30 days.
5. DES is clearly provided time to review information submitted by an appellant as a part of a request for reconsideration of a permit denial when that denial was based upon the failure of the applicant to submit information required under the original application.
6. Clarification is provided of the procedures to be followed by DES to reasonably provide for conservation commission comment.

DES has also launched an initiative to improve the Wetlands Program, in partnership with the Wetlands Council. As you may recall, DES provided a briefing to interested legislators on this initiative on October 31, 2007. This initiative is intended to not only address the findings and recommendations of the LBA Audit Report but also to identify other areas for program improvements and implement changes. We expect that this process will result in the development of action items focused on areas for improved program management and amendments to wetlands statutes and regulations for program clarification. In fact, a number of improvements have already been made, and we would be happy to provide an update on this initiative at your request.

Thank you for this opportunity to comment on this bill. Please feel free to call Collis Adams at 271-4054, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representatives Weyler, O'Connell, Webb, and Irwin, and Senator Janeway